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L. Schane Confer
EP Compliance Specialist
Pennsylvania Department of Environmental Protection
Northcentral Regional Office
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Williamsport, PA 17701-6448
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Dear Mr. Confer:

This letter responds to the January 7, 2022 Notice of Violation (“**NOV**”) that the Department of Environmental Protection (“**Department**”) issued to Big Dog Energy, LLC (“**Big Dog**”) with respect to the Hegarty A unconventional natural gas well site in Beccaria Township, Clearfield County. The NOV alleges that Big Dog installed and is operating 30 natural gas fired generators and one gas producing unit (“**GPU**”) without authorization pursuant to the Department’s air permitting rules. For the reasons explained below, the generators and gas producing unit are exempt from air permitting requirements and no such violations have occurred.

Exemption 38 from the Department’s Air Quality Permit Exemptions Guidance, Doc. No. 275-2101-003 (July 1, 2021) exempts from permitting requirements “[o]il and gas exploration, development, and production facilities and associated equipment and operations[.]” Such facilities that were constructed prior to August 10, 2013 are unconditionally exempt from permitting requirements under Exemption 38(a). Such facilities that are constructed or modified after August 8, 2018 are exempt so long as they comply with the additional criteria set forth in Exemption 38(c).

The Hegarty A well pad was constructed and drilled prior to August 10, 2013, and thus for many years has been unconditionally exempt from air permitting requirements under the provisions currently found in Exemption 38(a). Until recently, the well on the pad was inactive and not producing gas.

In [October 2021], Big Dog introduced to the well pad a new GPU and began producing natural gas from the existing well. At this time, Big Dog also introduced several portable natural gas-fired generators that qualify as “nonroad engines” under U.S. Environmental Protection Agency (“**EPA**”) rules and are appropriately certified as such.¹ The generators provide electrical power

¹ See 40 C.F.R. § 1068.30 (defining “nonroad engine,” in relevant part, as “an internal combustion engine that ... [b]y itself or in or on a piece of equipment ... is portable or transportable” provided the engine will not “remain at a location for more than 12 consecutive months[.]”). We note that Exemption 38 references the definition of “nonroad engine” at 40 C.F.R. § 89.2. In 2021, EPA deleted the definition of “nonroad engine” and all other content from Part 89 because that Part had become obsolete. See 86 Fed. Reg. 34372 (June 29, 2021). However, the same EPA definition of “nonroad engine” (quote above) now appears at 40 C.F.R. § 1068.30. The Department should correct this cross-reference the next time it revises the Air Quality Permit Exemptions Guidance.



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to bitcoin mining equipment that is temporarily co-located on the well pad. Big Dog leases and operates the portable generators, which are mounted on trailers and rotated off-site for maintenance approximately every 30 days. Big Dog intends to operate the generators only on a temporary basis (for less than 12 months) due to the anticipated short-term duration of the bitcoin mining activities and the limited supply of gas that can be profitably produced from the site. But-for the generators, the well would not be producing any gas due to the absence of other viable markets.

Assuming for the sake of argument that the introduction of the GPU and/or the portable generators to the Hegarty A well pad rendered Exemption 38(a) inapplicable,² the above-described operations are nevertheless exempt from permitting under Exemption 38(c). Exemption 38(c) applies to “[o]il and gas ... production facilities and associated equipment and operations,” including “[u]nconventional natural gas well site operations” meeting specified criteria (emphasis added). The term “unconventional natural gas well site operations” is defined in GP-5A—the Department’s general permit for unconventional natural gas well sites—as follows:

Unconventional Natural Gas Well Site Operations – Equipment and processes at unconventional natural gas well sites including, but not limited to, gas dehydration, tanker truck load-out, wellbore liquid unloading, gas compression, pigging, and storage.³

Under the plain language of this definition, all equipment and processes located at an unconventional natural gas well site qualify as part of the “unconventional natural gas well site operations.” PADEP issued GP-5A simultaneously with Exemption 38(c) in 2018, and therefore this definition should be applied when interpreting the scope of Exemption 38(c).⁴ Thus, the GPU and the portable generators qualify as part of the “unconventional natural gas well site operations” at the Hegarty A unconventional natural gas well site. As such, these emission sources are exempt from permitting requirements as long as Big Dog complies with all Exemption 38(c) criteria—which we are willing to do.

We understand that PADEP’s Northcentral Regional Office would like to apply a different definition of “unconventional natural gas well site operations” to the Hegarty A well pad, such that the generators would fall outside the scope of Exemption 38(c) because they do not directly support the production of natural gas. Respectfully, the Department does not have the authority to deviate from

the definition of “unconventional natural gas well site operations” that it promulgated in 2018. Any change to this definition would require a formal amendment to GP-5A and Exemption 38(c),

² Big Dog expressly reserves the right to challenge whether the introduction of a new GPU (in the absence of new drilling or hydraulic fracturing activity) and exempt nonroad engines to a pre-2013 well site renders Exemption 38(a) inapplicable.

³ General Plan Approval and/or General Operating Permit BAQ-GPA/GP-5A, Unconventional Natural Gas Well Site Operations and Remote Pigging Stations, 2700-PM-BAQ0268 (Rev. 6/2018) at page 3 (emphasis added).

⁴ See 48 Pa.B. 3395, 3490-91 (June 9, 2018).



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including a new public notice and comment process.

Furthermore, in analogous circumstances at other well sites, the Department has already determined that gas-fired engines supplying electricity to co-located bitcoin mining operations qualify as “unconventional natural gas well site operations.” For instance, on November 3, 2021, the Department issued GP-5A approval to Pin Oak Energy Partners, LLC to install and operate several engines that supply power to bitcoin mining operations located at the “Central Facility Power Generation and Gas Sales (Bitcoin Mining) Station” in Ridgeway Township, Elk County.⁵ We understand that the Department’s Central Office was consulted and agreed that these engines could be permitted under GP-5A as part of the unconventional natural gas well site operations at the site. The Department’s Northcentral Office cannot now adopt a different interpretation with respect to the Hegarty A pad, particularly since Big Dog has already made substantial financial and operational commitments in reliance on the Department’s earlier (correct) interpretation.

Relatedly, in Big Dog’s discussions with the Department regarding the Hegarty A well pad, the Department has indicated that it would be willing to permit the generators at this site under GP-5A (which, again, applies only to unconventional natural gas well site operations). The Department cannot treat the generators as part of the unconventional well site operations for purposes of GP-5A and then take the exact opposite position under Exemption 38. Moreover, GP-5A cannot be lawfully used to permit these particular portable generators, because (as the Department confirmed at the time of GP-5A’s issuance) “GP-5A does not apply to temporary activities, including nonroad engines used at well sites.”⁶ Rather, “[t]hese activities are addressed in Exemption 38” and “are required to meet the applicable federal regulations.”⁷

For the reasons explained above, Big Dog respectfully requests that the Department withdraw its NOV and confirm that all equipment and processes at the Hegarty A well pad qualify for an exemption from permitting requirements under Exemption 38(c). As indicated above, Big Dog is willing to comply with all applicable Exemption 38(c) criteria, including leak detection and repair (“LDAR”) requirements, recordkeeping requirements, and limits on emissions of methane, volatile organic compounds (“VOCs”), hazardous air pollutants (“HAPs”) and nitrogen oxide (“NO_x”).⁸

⁵ See 51 Pa.B. 7331, 7378 (Nov. 27, 2021).

⁶ See Comment and Response Document for GP-5A and GP-5 and the Revisions to the Air Quality Permit Exemptions, Part 1 of 2 (June 2018) at 87.

⁷ *Id.* See also *id.* at

⁸ We understand that the generators would not be subject to Exemption 38(c) emission limits, because nonroad engines are unconditionally exempt from permit requirements under the language of Exemption 38(c).iv. This is consistent with the broader limits of the Department’s authority with respect to the regulation of nonroad engines, which the Department has previously acknowledged. See Comment and Response Document for GP-5A and GP-5 and the Revisions to the Air Quality Permit Exemptions, Part 1 of 2 (June 2018) at 32 (“Non-road engines are regulated by the federal government and states such as Pennsylvania are pre-empted from establishing more stringent emissions standards and requirements than the Federal requirements[.]”); *id.* at 35 (“The CAA under Section 209(e), 42 U.S.C. § 7543(e), preempts states such as Pennsylvania from adopting independent BAT standards for non-road engines.”).



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We appreciate your prompt attention to this matter. If you have any questions or concerns regarding the above, please do not hesitate to contact me at matt@bdenergyllc.com or 724-856-1896.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Anderson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Matthew Anderson
Big Dog Energy, LLC

cc: Craig P. Wilson, K&L Gates LLP
Tad J. Macfarlan, K&L Gates LLP
Thomas C. Ryan, K&L Gates LLP